

**Manager Workplace Harassment Prevention Toolkit:**  
Your guide to preventing and identifying harassment in the workplace

Question:	Answer:
<b>What is harassment?</b>	Unwelcome verbal or physical conduct that denigrates, shows hostility or aversion toward an individual based on any characteristic protected by law, which includes race, color, religion, sex (including gender identity, sex-stereotyping, transgender status, and pregnancy), national origin, age (40 and older), disability, genetic information, sexual orientation, parental status, marital status, political affiliation, military service, <b>or</b> retaliation.
<b>What constitutes the basis of retaliation when alleging harassment?</b>	Anti-discrimination laws prohibit harassment of an individual in retaliation against an employee who has: filed a discrimination complaint, testified, assisted or participated in any manner in an investigation, proceeding, hearing or litigation under governing EEOC statutes, oppose employment practices they believe to discriminate, or requested a reasonable accommodation.
<b>What is unlawful harassment?</b>	Harassment becomes unlawful where <ol style="list-style-type: none"> <li>1) Enduring the offensive conduct becomes a condition of continued employment, or</li> <li>2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.</li> </ol>
<b>What are the two basic types of unlawful harassment?</b>	Quid Pro Quo Harassment- “This for That” And Hostile Work Environment Harassment
<b>What is Quid Pro Quo Harassment?</b>	Quid Pro Quo harassment occurs when a <i>tangible employment action</i> is made based on the employee’s submission to or rejection of unwelcome conduct. This kind of harassment is generally committed by a supervisor or someone who can make or recommend formal employment decisions that will affect the victim.
<b>What is a tangible employment action?</b>	A tangible employment action involves a significant change in status, e.g., change in pay, work status, dismissal, demotion, hire, failure to promote, transfer, undesirable reassignment, and work assignments.

<b>What is Hostile Work Environment Harassment?</b>	A hostile work environment can result from the unwelcome conduct of supervisors, co-workers, customers, contractors, or anyone else with whom the victim interacts on the job, and the unwelcome conduct is so severe or pervasive that it renders the workplace atmosphere intimidating, hostile, or offensive to a reasonable person.
<b>What are some examples of behaviors that may contribute to hostile work environment harassment?</b>	Examples of behaviors may include, but are not limited to: Telling off color or offensive jokes concerning race, age, national origin, sex (including gender identity, sex-stereotyping, transgender status, and pregnancy), disability, color or other protected bases; derogatory comments about mental or physical impairments; discussing sexual activities; unnecessary touching; commenting on physical attributes; displaying racially insensitive or sexually suggestive pictures or objects; using demeaning or inappropriate terms or epithets; ridicule or mockery; using indecent gestures; name calling; using crude language; sabotaging the victim's work; engaging in hostile physical contact.
<b>What determines if the harassing conduct is severe or pervasive?</b>	Whether an instance or a pattern of harassing conduct is <i>severe or pervasive</i> is determined on a <u>case-by-case basis</u> , with consideration paid to the following factors: 1. the frequency of the unwelcome discriminatory conduct; 2. the severity of the conduct; 3. whether the conduct was physically threatening or humiliating, or a mere offensive utterance; 4. whether the conduct unreasonable interfered with work performance; 5. the effect on the employee's psychological well-being; and 6. whether the harasser was a superior within the organization. Each factor is considered, but none are required or dispositive.
<b>What law(s) are violated by harassment?</b>	Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, The Age Discrimination in Employment Act of 1967, (ADEA), The Americans with Disabilities Act of 1990, (ADA), and The Genetic Information and Non-Discrimination Act of 2008, (GINA) for EEO protected categories under the law. Moreover, consistent with Presidential Executive Orders and other laws, such as, Executive Order 11478, Civil Service Reform Act, The Notification And Federal Antidiscrimination and Retaliation Act,(No FEAR), Whistleblower Protection Enhancement Act, and Uniformed Services Employment and Reemployment Rights Act, (USERRA), federal employees are protected from harassment based on other legally protected categories.

<p><b>Why must a manager react when harassment or hostile work environment is brought to their attention?</b></p>	<p>In litigation, the only defense to an allegation of harassment where there has not been a <i>tangible employment action</i>, is that immediately upon being notified of the allegation you conducted a swift administrative inquiry. Upon determining that inappropriate conduct occurred, that you correct and cured the harassment/hostile work environment and ensured that it would not continue into the future. Therefore it is imperative that a manager react quickly when allegations are brought to their attention.</p>
<p><b>What course of action should a manager take if a harassment claim is brought to him or her?</b></p>	<p>As a manager you must initiate an immediate administrative inquiry process by contacting your employee relations specialist who will assist you in conducting an investigation intended to gather information to determine what action, if any, should be taken. This information is not intended for legal or criminal prosecution. You may locate your employee relations specialist by clicking the following link <a href="#">Employee Relations Contacts</a>.</p>
<p><b>What course of action should a manager take if a harassment claim is brought against him or her?</b></p>	<p>If a harassment claim has been brought against you your behavior will be under increased scrutiny. To avoid exacerbating the situation you should not engage in the behavior cited in the complaint. The NIH is committed to promoting and maintaining a work environment free from discrimination and retaliation. Reprisal for participation in the EEO process is prohibited. Therefore, any retaliation against the Complainant is barred. It is strongly advised that any behavior that could be perceived as retaliatory be strictly avoided. It is imperative that you be supportive and cooperative of the resolution process and maintain a record of relevant communications and events.</p>
<p><b>What course of action should a manager take if the victim elects to not pursue the complaint?</b></p>	<p>The National Institutes of Health is legally obligated to investigate any potential allegations of harassment once it is notified of its existence. Once management is made aware of potentially unlawful behavior it is duty bound to investigate regardless of the victim's wishes.</p>
<p><b>What if an employee wants to confidentially share that they are being subjected to harassment but they don't want you to do anything and they don't want the alleged harasser to get into trouble?</b></p>	<p>Once you are notified you have an obligation to conduct an inquiry and correct and cure any harassment. The manager should understand that once they are put on notice, the agency has been put on notice, and we would not have a defense in cases where there is no <i>tangible employment action</i> if the manager does not immediately look into the allegations and take action. The manager should explain to the employee that they have no choice but to look into it and they cannot honor the employee's request not to do anything about it.</p>

<b>What course of action should a manager take if he or she witnesses harassment?</b>	Any manager who witnesses an act of potential unlawful harassment is required to initiate an immediate administrative inquiry process. You may locate your employee relations specialist who can assist you in conducting an investigation by clicking the following link <a href="#">Employee Relations Contacts</a> .
<b>What course of action should a manager take if he or she learned of the harassment via informal channels such as gossip or rumors?</b>	To prevent harassment in the workplace management must take a proactive, not reactive, stance to harassment. Being proactive means adopting the NIH's zero tolerance harassment policy. Managers should investigate all allegations of harassment regardless of how he or she was made aware of the allegations.

### Workplace Harassment Videos:

WATCH: ["Flashpoint"](#)

Area:	Key Points:
<b>Manager</b>	<ul style="list-style-type: none"> <li>Managers are responsible for the quality of the work environment and must ensure that individuals are free from harassment. This means that in addition to being responsible for your own actions, you are responsible for the interactions of other individuals in your workplace.</li> <li>Managers must take immediate and appropriate action(s) to stop harassment and the action(s) taken must ensure it never happens again.</li> </ul>
<b>Victim</b>	<ul style="list-style-type: none"> <li>The victim should notify a supervisor, management official, or EEO representative of harassment because an Agency cannot correct harassing conduct if a supervisor, manager, or other Agency official does not become aware of it.</li> <li>The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.</li> </ul>
<b>Harasser(s)</b>	<ul style="list-style-type: none"> <li>The harasser(s) can be the victim's supervisor, a supervisor in another area, a co-worker, an agent of the NIH, another NIH employee, or a non-employee who has a business relationship with the NIH.</li> </ul>

<b>Action(s)</b>	<ul style="list-style-type: none"> <li>• Unlawful harassment may occur without economic injury to or discharge of the victim.</li> <li>• The harasser's conduct must be unwelcome.</li> <li>• The unwelcome conduct must be severe or pervasive under a reasonable person standard</li> <li>• NIH has the legal right to perform administrative inquiries based on the right to manage the workforce and respond to allegations of sexual harassment, and incidents of misconduct which may lead to disciplinary action.</li> </ul>
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### What You Should Know, But Probably Don't

- The NIH is automatically liable for harassment that results in a significant change in an individual's employment status (hiring, firing, promotions, demotions, undesirable reassignment) regardless of upper management's level of knowledge.
- The NIH is liable if it knew or should have known of hostile work environment harassment and failed to take immediate and appropriate action.
- Agency knowledge is assumed if:
  - The victim complains about harassment;
  - The conduct occurred in the presence of the supervisor; or
  - The conduct is widespread.

### How to Prevent Workplace Harassment

<ul style="list-style-type: none"> <li>• Post the NIH's EEO policy in a highly visible physical or electronic location</li> <li>• Disseminate the NIH's EEO policy to everyone and often</li> <li>• Firmly and consistently enforce the NIH's EEO policy</li> <li>• Monitor behavior. Acquire a sense of what is normal and abnormal workplace behavior for your employees.</li> <li>• Respond to all allegations immediately and effectively.</li> </ul>	<ul style="list-style-type: none"> <li>• Treat all complaints seriously, consistently, and confidentially</li> <li>• Only communicate information on a "need to know" basis</li> <li>• Be sensitive but neutral.</li> <li>• Follow up with both the harasser(s) and the victim to make sure the harassment does not recur</li> <li>• Document your actions</li> <li>• Avoid even the appearance of retaliation. For example, if an employee must be removed from the workplace do not remove the alleged victim, unless it is their request.</li> </ul>
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Failing to prevent workplace harassment can impact a manager's performance rating and may subject the manager to disciplinary action. Therefore, **RESPOND:**

- Regularly review the Agency's policies with staff.
- Encourage a high standard of conduct.
- Support employees in reporting harassment.
- Promptly respond to harassment.
- Offer effective solutions to stop harassment.
- Never fail to act when aware: promptly conduct an administrative inquiry
- Develop partnerships with EDI and OHR

### Case Examples:

Addresses:	Case:
Agency took prompt remedial action-noose in workplace	<u><i>Posey v. United States Postal Service</i></u>
Agency took appropriate action- racially charged comment	<u><i>Nicholas v. Department of Agriculture</i></u>

Agency failed to take appropriate action-raced based harassment of manager	<a href="#"><i>Richardson v. Department of Homeland Security</i></a>
Agency's remedial actions did not end the harassment	<a href="#"><i>Cheeks v. Department of the Army</i></a>
Agency failed to take appropriate action-raced based harassment of supervisory nurse by staff	<a href="#"><i>Menard v. Department of Veterans Affairs</i></a>

### **Contacts:**

WHO TO ASK ABOUT WHAT

[Division of Complaints Management and Resolution](#)

[Identify Your Formal Complaints Specialist](#)

[Office of Equal Opportunity and Diversity Management contact](#)

[NIH Ombudsman contact](#)

### **Resources:**

WHERE TO GO FOR MORE INFORMATION

[Title VII of the Civil Rights Act of 1964](#)

[29 C.F.R. Section 1604.11](#)

**NIH Administrative Inquiries** (can't be done until new website in document library)

[EEOC Facts about Harassment](#)

[EEOC Facts about National Origin and Religious Harassment](#)

[EEOC cases involving Racial Harassment since 2009](#)

[U.S. Department of Labor, Veterans Employment & Training Service \(DOL-VETS\)](#)

[Office of Special Counsel](#)

[USERRA Complaint Form](#)

[NIH Procedures for Handling Allegations of Sexual Harassment](#)  
[Facts about Discrimination in Federal Government Employment Based on Marital](#)  
[Status, Political Affiliation, Status as a Parent, Sexual Orientation, or Transgender](#)  
[\(Gender Identity\) Status](#)